IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 121 OF 2004

CONVERTED FROM

CIVIL REVISION APPLICATION NO.218 OF 1997

1.Adil Godrej Bharucha
adult, Occ: Business,
residing at Flat No.2,
Darius Apartments No.1,
Salisbury Park, Pune-411001,
2.Fakir Hormusji Hyderabadwala,
adult, Occ: Business, residing
at flat No.2, Darius Apts.,
No.1,Salisbury Park,Pune-1, ... Appellants
Orig.plaintiffs

V/s

1.Master Sukhia & Co.,
a partnership firm having
its office Apollo Talkies,
Pune-411 011 by its partners,
2.Mrs.Baimai Rustom Master,
adult, Occ: Business, residing
at No.8, Col.Tarapore Road,
Pune-411 001,
3.Mr.Jimmy Dara Sukhia,
adult, Occ: Business, residing

at No.1, Salisbury Park,
Pune-411 001,

4.Mrs.Armaity Jimmy Sukhia,
adult, Occ: Business,
residing at same as No.3
above. ... Respondents
Orig.defendants

Mr. Madhav Jamdar for Appellants

Mr.V.G.Mujumdar for Respondents No.1,2,3 & 5

Coram : A.S. Oka, J.

Date : 8th February,2005

ORAL JUDGMENT

1 Admit. The Respondents waive service. Considering the facts and circumstances of the case taken up for hearing forthwith.

2 Mr.Jamdar, learned counsel appearing for Appellants on instructions states that Appellants do not desire to prosecute the suit as against the Respondent No.4(the Defendant No.4) and necessary application to that effect will be made in the Trial Court within 2 weeks from today.The statement is accepted.

2. The Appellants are the original Plaintiffs. They have challenged the judgment and order dated 4th December 1996 passed by the learned trial judge by which application for review(Exhibit 59) made by the Respondents has been allowed.

3. The Appellants/Plaintiffs filed a suit for specific performance of agreements for sale dated 15th March 1974 and 3rd December 1976 executed in their favour by the Respondent No.1. By the said agreements Appellants agreed to purchase two flats in the building known as “Dairus Apartments” at Salisbury Park, Pune. It is not in dispute that said agreements are governed by the Maharashtra Ownership Flats (Regulation of the promotion, construction, sale, management and transfer)Act,1963(hereinafter referred to said act of 1963).

4. The trial of said suit commenced and agreement dated 30th December 1976 produced by Appellants was ordered to be exhibited as Exhibit 43.

5. An earlier application was made by the Respondents contending that document at Exhibit 43 should be de-exhibited and said the document should be impounded. The contention raised in the said application was that under sec. 17 of Indian Registration Act 1908(hereinafter referred to as the said Act of 1908)the document was compulsorily registerable. Reliance was placed on article 25 of the Bombay Stamp Act 1958(hereinafter referred to as the said Act of 1958). The said Application was rejected by the trial court by an order dated 2nd August,1995. The order impugned has been passed on an application made by the Respondents for review of said order dated 2nd August 1995. The learned trial judge while allowing the review application has held that as per the recitals in the

document on handing over the possession of suit flat, the Appellants became the owners of suit flat and, therefore, the said document amounts to a deed of conveyance. Therefore, the learned trial judge has directed that document should be de-exhibited and shall not be read in evidence.

6. The learned counsel Mr.Jamadar for Appellants submits that that the agreement was governed by the provisions of said Act 1963 and, therefore, registration of document was not mandatory. He submits that as per the provisions of said Act of 1958 as prevailing on the date of execution of the Agreement, the same cannot be treated as a conveyance.

7. Mr.Mujumdar, learned counsel appearing for respondents submits that document was a compulsorily registerable document and, therefore, the order passed by the learned trial court is justified.

8. In the impugned order, the learned trial judge has held that the Agreement amounts to a deed of conveyance under which possession has been given and it is not stamped as a conveyance. He held that the document is not registered though it was compulsorily required to be registered. It is obvious that the learned trial judge has relied upon Explanation-I to the Article 25 in the Schedule of said Act of 1958. The explanation was brought on the statue book with effect from 10th December 1985 and, therefore the said explanation cannot be applied to a

document which was executed on 30th December 1976. In so far as registration is concerned, section 4A of said Act 1963 is the complete answer to submissions of Mr.Mujumdar. Section 4A reads thus.

> 4A. **Effect of non-registration of agreement required to be registered under section 4.**
>
> Where an agreement for sale entered into under sub-section (1)of section 4, whether entered into before or after the commencement of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer)(Amendment and Validating Provisions)Act, 1983, remains unregistered for any reason, then notwithstanding anything contained in any law for the time being in force, or in any judgment, decree or order of any Court, it may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1963, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act,1882, or as evidence of any collateral transaction not required to be effected by registered instrument.

9. Apart from this, the learned trial judge has allowed review application only on the ground that as the possession of the suit flat was handed over to Applellants under suit agreement, the same amounts to a conveyance.As explanation-I of Article 25 was not on the statute book in the year 1976, the Agreement cannot be treated as a conveyance.

10. Apart from the fact that the view taken by the learned trial judge is wrong, in my opinion there was no error apparent on the face of record warranting the exercise of jurisdiction under Order 47 of the Code of

Civil Procedure,1908. Hence, the Appeal deserves to be allowed. Accordingly,I pass following order:

ORDER

1.Appeal is allowed.

2.The impugned judgment and order 4th December 1996 is quashed and set aside.

3.Application for review (Exhibit 59) stands rejected.

4.It is made clear that the learned trial judge will decide the suit on its own merit and all the contentions of the parties in the suit are kept open.

5.It will be open for Respondents to raise a question of maintainability of the suit on the ground of deletion of the Defendant No.4 .

5.As the said suit is of 1991 the learned trial judge will decide the suit as expeditiously as possible.

6.There shall be no order as to costs.

7.Parties to act on an authenticated copy of this order.

(A.S. Oka,J.)